

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)		
<b>PLAINTIFFS</b>		<b>DEFENDANTS</b>		
<b>ATTORNEYS</b> (Firm Name, Address, and Telephone No.)		<b>ATTORNEYS</b> (If Known)		
<b>PARTY</b> (Check One Box Only)		<b>PARTY</b> (Check One Box Only)		
<input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		<input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee		
<b>CAUSE OF ACTION</b> (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)				
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top; width: 50%; padding-right: 10px;"> <input type="checkbox"/> <b>FRBP 7001(1) – Recovery of Money/Property</b>            11 - Recovery of money/property - § 542 turnover of property  <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference  <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer  <input type="checkbox"/> 14 - Recovery of money/property - other   <input type="checkbox"/> <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b>            21 - Validity, priority or extent of lien or other interest in property   <input type="checkbox"/> <b>FRBP 7001(3) – Approval of Sale of Property</b>            31 - Approval of sale of property of estate and of co-owner - § 363(h)   <input type="checkbox"/> <b>FRBP 7001(4) – Objection/Revocation of Discharge</b>            41 - Objection / revocation of discharge - § 727(c),(d),(e)   <input type="checkbox"/> <b>FRBP 7001(5) – Revocation of Confirmation</b>            51 - Revocation of confirmation   <input type="checkbox"/> <b>FRBP 7001(6) – Dischargeability</b>            66 - Dischargeability - § 523(a)(1),(14),(14A) priority tax claims  <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud  <input type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny             (continued next column)         </td> <td style="vertical-align: top; width: 50%; padding-left: 10px;"> <input type="checkbox"/> <b>FRBP 7001(6) – Dischargeability (continued)</b>            61 - Dischargeability - § 523(a)(5), domestic support  <input type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury  <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan  <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support)  <input type="checkbox"/> 65 - Dischargeability - other   <input type="checkbox"/> <b>FRBP 7001(7) – Injunctive Relief</b>            71 - Injunctive relief - reinstatement of stay  <input type="checkbox"/> 72 - Injunctive relief - other   <input type="checkbox"/> <b>FRBP 7001(8) Subordination of Claim or Interest</b>            81 - Subordination of claim or interest   <input type="checkbox"/> <b>FRBP 7001(9) Declaratory Judgment</b>            91 - Declaratory judgment   <input type="checkbox"/> <b>FRBP 7001(10) Determination of Removed Action</b>            01 - Determination of removed claim or cause   <input type="checkbox"/> <b>Other</b>            SS-SIPA Case – 15 U.S.C. §§ 78aaa <i>et seq.</i>  <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)         </td> </tr> </table>			<input type="checkbox"/> <b>FRBP 7001(1) – Recovery of Money/Property</b> 11 - Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer <input type="checkbox"/> 14 - Recovery of money/property - other  <input type="checkbox"/> <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> 21 - Validity, priority or extent of lien or other interest in property  <input type="checkbox"/> <b>FRBP 7001(3) – Approval of Sale of Property</b> 31 - Approval of sale of property of estate and of co-owner - § 363(h)  <input type="checkbox"/> <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> 41 - Objection / revocation of discharge - § 727(c),(d),(e)  <input type="checkbox"/> <b>FRBP 7001(5) – Revocation of Confirmation</b> 51 - Revocation of confirmation  <input type="checkbox"/> <b>FRBP 7001(6) – Dischargeability</b> 66 - Dischargeability - § 523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny  (continued next column)	<input type="checkbox"/> <b>FRBP 7001(6) – Dischargeability (continued)</b> 61 - Dischargeability - § 523(a)(5), domestic support <input type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 - Dischargeability - other  <input type="checkbox"/> <b>FRBP 7001(7) – Injunctive Relief</b> 71 - Injunctive relief - reinstatement of stay <input type="checkbox"/> 72 - Injunctive relief - other  <input type="checkbox"/> <b>FRBP 7001(8) Subordination of Claim or Interest</b> 81 - Subordination of claim or interest  <input type="checkbox"/> <b>FRBP 7001(9) Declaratory Judgment</b> 91 - Declaratory judgment  <input type="checkbox"/> <b>FRBP 7001(10) Determination of Removed Action</b> 01 - Determination of removed claim or cause  <input type="checkbox"/> <b>Other</b> SS-SIPA Case – 15 U.S.C. §§ 78aaa <i>et seq.</i> <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23		
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$		
Other Relief Sought				

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR		BANKRUPTCY CASE NO.
DISTRICT IN WHICH CASE IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF)		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF)	

## INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court’s Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

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Attorneys for KBR Group, LLC, KBR Opportunity  
Fund I, LP, and KBR Opportunity Fund II, LP

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:  
  
COLONY PROPERTIES INTERNATIONAL  
II, LLC, a California limited liability  
company,  
  
Debtor.

Case No. 10-03361-PB11-INV

Adv. No.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

KBR GROUP, LLC, a California limited  
liability company; KBR OPPORTUNITY  
FUND I, LP, a California limited partnership;  
and KBR OPPORTUNITY FUND II, LP, a  
California limited partnership,  
Plaintiffs,

v.

NICOLAS MARSCH, III, an individual;  
COLONY PROPERTIES  
INTERNATIONAL, LLC, a California  
limited liability company; COLONY  
PROPERTIES INTERNATIONAL II, LLC, a  
California limited liability company;  
BRIARWOOD CAPITAL, LLC, a California  
limited liability company; and KRMW REAL  
ESTATE INVESTMENT GROUP, LLC, a  
California limited liability company,

Defendants.

1 KBR Group, LLC (“KBR Group”), KBR Opportunity Fund I, LP (“KBR Fund I”),  
2 and KBR Opportunity Fund II, LP (“KBR Fund II”) (collectively “Plaintiffs” or the “KBR  
3 Parties”) allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has exclusive jurisdiction over this proceeding pursuant to 28  
6 U.S.C. §§ 157 and 1334.

7 2. This matter constitutes a core proceeding pursuant to and 28 U.S.C. §§  
8 157(b)(2)(A), (O), and 1334.

9 3. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

10 4. Plaintiffs are informed and believe and thereon allege that the causes of action  
11 set forth herein are properly brought in this Court and are not subject to arbitration because  
12 they are core proceedings. This complaint is not intended as a waiver of any applicable  
13 rights or duties to arbitrate.

14 **THE PARTIES**

15 5. Plaintiff KBR Group is a California limited liability company.

16 6. Plaintiff KBR Fund I is a California limited partnership.

17 7. Plaintiff KBR Fund II is a California limited partnership.

18 8. Plaintiff is informed and believes and thereon alleges that defendant Colony  
19 Properties International, LLC (“Colony I”) is a California limited liability company with its  
20 principal place of business in California. Plaintiff is further informed and believes and  
21 thereon alleges that Colony I is the sole member of Colony Properties International II, LLC.

22 9. Plaintiff is informed and believes and thereon alleges that defendant Colony  
23 Properties International II, LLC (“Colony II”) is a California limited liability company with  
24 its principal place of business in California.

25 10. Plaintiff is informed and believes and thereon alleges that defendant Marsch  
26 is a San Diego resident and is the sole member of Colony I.

27 11. Plaintiff is informed and believes and thereon alleges that defendant  
28 Briarwood Capital, LLC (“Briarwood”) is a California limited liability company with its

1 principal place of business in California. Plaintiff is further informed and believes and  
2 thereon alleges that Marsch is the sole member of Briarwood.

3 12. Defendant KRMW Real Estate Investment Group, LLC (“KRMW”) is a  
4 California limited liability company with its principal place of business in California. The  
5 membership of KRMW is as follows: Briarwood is the Common Member and KBR Fund II  
6 is the Preferred Member.

7 13. Marsch, Briarwood, Colony I, and Colony II are collectively referred to herein  
8 as the “Marsch Parties.”

9 **GENERAL ALLEGATIONS**

10 **The Colony Loan Agreement**

11 14. On or about June 24, 2008, Colony I, Colony II, Marsch, and KBR Fund I  
12 entered into a written loan agreement (the “Colony Loan Agreement”). A true and correct  
13 copy of the Colony Loan Agreement is attached as **Exhibit 1**.

14 15. Pursuant to the terms of the Colony Loan Agreement, Colony I and Colony II  
15 jointly borrowed from KBR Fund I the original principal sum of \$4,900,000, of which  
16 \$4,400,000 was initially disbursed and the balance was held as reserves for specific  
17 payments.

18 16. Colony I and Colony II made, executed, and delivered to KBR Fund I a  
19 Promissory Note in the original principal amount of \$5,880,000 to evidence the loan (the  
20 “Colony Loan Promissory Note”). The Colony Loan Agreement expressly states that the  
21 Promissory Note shall be in the face amount of the loan plus the maximum Premium  
22 Amount, which is defined in the Colony Loan Agreement. A true and correct copy of the  
23 Colony Loan Promissory Note is attached as **Exhibit 2**.

24 17. KBR Fund I currently holds and owns all right, title, and interest in the  
25 Colony Loan Promissory Note and is the true and record beneficiary of the Colony Loan  
26 Agreement and the security interests thereto.

27 18. The Colony Loan Agreement is secured by certain property interests  
28 including, without limitation, the following:

1           a.       A first priority mortgage lien encumbering real property in San Jose  
2 Del Cabo, Mexico, known as No. 496 Villas del Mar (“Unit 496”) and No. 21 Villas  
3 Del Mar (“Unit 21”), and all improvements and personal property on such real  
4 property, recorded in the Cabo San Lucas County Recorder’s Office on June 15,  
5 2009, as Instrument No. 572312, and insured by LandAmerica Title Insurance  
6 Company of Mexico, S.A., Policy No. M08-KBR-SJC-319, issued on August 16,  
7 2008;

8           b.       An Assignment of Leases and Rents on Unit 496 and Unit 21;

9           c.       A first priority security interest in all of Colony I’s interest in Colony  
10 II and all other assets of Colony I;

11           d.       A first priority security interest in all of Marsch’s member interest in  
12 Colony I; and

13           e.       A security interest in all assets of Colony II.

14       19.       KBR Fund I’s security interests in personal property are perfected by UCC  
15 Financing Statements filed with the California Secretary of State.

16       20.       Colony I and Colony II are obligated by the Promissory note and the Colony  
17 Loan Agreement to make monthly payments to KBR Fund I and to comply with various  
18 other obligations as set forth in the loan documents.

19       21.       The Colony Loan Agreement makes clear that it is an event of default should  
20 Colony I and Colony II fail to pay within ten days of when due any principal or interest under  
21 the Promissory Note.

22       22.       On May 1, 2009, counsel for Colony I notified counsel for KBR Fund I that it  
23 would not be making a payment due on May 1, 2009.

24       23.       On May 6, 2009, counsel for KBR Fund I replied that an interest payment  
25 became due on May 1, 2009 under Section 2.5 of the Colony Loan Agreement, and that if  
26 payment were not made by May 10, 2009, an event of default would occur.

27       24.       To date, there has been no payment of the interest due on May 1, 2009.

1           25.     KBR Fund I has received no payments under the Colony Loan Agreement  
2 since April of 2009.

3           26.     Accordingly, since May 10, 2009, KBR Fund I has been entitled to exercise  
4 all of its rights and remedies under the Colony Loan Agreement, based on Colony I and  
5 Colony II's default of that agreement as of May 10, 2009.

6           27.     On May 15, 2009, Shawn Wamstad ("Wamstad") notified Marsch on behalf  
7 of KBR Fund I that KBR Fund I was exercising its right to accelerate the loan and declare all  
8 loan funds to be due and payable.

9           28.     On May 20, 2009, Michel Kucinski ("Kucinski"), on behalf of KBR Fund I,  
10 sent Marsch a further Notice of Default on the Colony Loan Agreement.

11           29.     As of May 10, 2009, the amounts disbursed under the Colony Loan  
12 Agreement and all interest and premium thereon together with all sums accruing under the  
13 loan totaled \$5,054,932.42.

14           30.     Interest and other charges have continued to accrue since that time.

15           31.     Colony I and Colony II have failed and refused, and continue to fail and  
16 refuse, to pay the sums due and owing.

17           32.     Under the Colony Loan Agreement, regardless of the default and acceleration,  
18 the loan matured on June 24, 2009.

19                           **The KRMW Operating Agreement**

20           33.     On October 9, 2008, Marsch, Briarwood, and KBR Fund II entered into that  
21 certain Operating Agreement for KRMW Real Estate Investment Group, LLC a California  
22 Limited Liability Company (the "KRMW Operating Agreement"). A true and correct copy of  
23 the KRMW Operating Agreement is attached as **Exhibit 3**.

24           34.     On or about October 9, 2008, the Articles of Organization for KRMW were  
25 filed with the California Secretary of State. The membership of KRMW is as follows:  
26 Briarwood is the Common Member and holds a thirty-five percent (35%) membership  
27 interest in KRMW and KBR Fund II is the Preferred Member and holds a sixty-five percent  
28 (65%) membership interest in KRMW.

1           35.     Marsch was the manager is the Manager of KRMW from October 9, 2008  
2 through February 23, 2010.

3           36.     Under the KRMW Operating Agreement, Briarwood and KBR Fund II each  
4 made capital contributions to KRMW.

5           37.     Specifically, under the KRMW Operating Agreement, KBR Fund II  
6 contributed to KRMW \$3,000,000 in cash. By agreement of the parties, KBR Fund II  
7 invested \$3,000,000 rather than \$4,190,000 for the contribution amount set forth in Section  
8 2.1.2 of the KRMW Operating Agreement.

9           38.     Furthermore, under the KRMW Operating Agreement, Briarwood and Marsh  
10 contributed to KRMW the following:

11               a.     All proceeds, awards, distributions, and other rights of value from their  
12 direct and indirect claims against Lennar Corporation relating to HCC Investors, LLC  
13 and Lennar Bridges, LLC and The Bridges development at Rancho Santa Fe,  
14 including claims asserted in Superior Court of San Diego Case No. GIC877446  
15 (“Bridges Litigation”), and their claims against Lennar Corporation relating to The  
16 Lakes development in Rancho Santa Fe, including claims asserted in Superior Court  
17 of San Diego Case No. GIC875457 (“Lakes Litigation”) (collectively the “Lennar  
18 Litigation”);

19               b.     All of their direct and indirect ownership interests in both HCC  
20 Investors, LLC and Lennar Bridges, LLC to the fullest extent permitted by these  
21 companies’ governing documents (except for certain identified Retained Benefits);  
22 and

23               c.     Their assumption of the obligation to pay all Lennar litigation costs.  
24 (KRMW Operating Agreement Section 2.1.1.)

25           39.     The KRMW Operating Agreement gives KBR Fund II a Preferred Member  
26 Put Right (“Put Right”), to require KRMW, Briarwood, or Marsch to purchase, on thirty  
27 days’ notice, all of KBR Fund II’s Preferred Units in KRMW (excluding the Retained Equity  
28 and Retained Litigation Interest) for a certain purchase price payment in cash pursuant to a



1 formula which includes adjustments for Preferred Returns minus certain Option Fees.  
2 (KRMW Operating Agreement at Section 4.4(2).)

3 40. KBR Fund II was authorized to exercise its Put Right on or after the earlier of  
4 (i) the second anniversary of the Effective Date of the KRMW Operating Agreement; or (ii)  
5 the date Marsch failed to timely exercise the right to extend the Repurchase Right and/or  
6 timely pay the \$120,000 option fee or failed to timely pay any Option Fee after the 18th  
7 month anniversary of the Effective Date; or (iii) the Litigation Determination Date. (KRMW  
8 Operating Agreement Section § 3.1.2.4.) One such event would be sufficient to trigger KBR  
9 II's Put Right. Multiple triggering events have occurred.

10 41. The time to exercise the right to extend the Repurchase Right and timely pay  
11 the \$120,000 option fee was at any time up to the first anniversary of the Effective Date.  
12 (KRMW Operating Agreement § 3.1.2.1.1.) KBR Fund II and Marsch disagree on whether  
13 the Effective Date for the KRMW Operating Agreement is the date the Agreement was  
14 dated, October 9, 2008, or the date on which KBR Fund II funded its investment in KRMW,  
15 November 5, 2008. Under either formulation, the 12-month anniversary of the Effective  
16 Date has passed. Marsch never exercised the option to extend the Repurchase Right and  
17 never paid the option fee. Marsch's failure to timely exercise the option to extend the  
18 Repurchase Right triggered KBR Fund II's right to exercise its Put Right.

19 42. KBR II's right to exercise its Put Right was also triggered on two separate  
20 occasions by occurrences of the Litigation Determination Date, as defined in the KRMW  
21 Operating Agreement. Section 4.4 of the KRMW Operating Agreement defines a "Litigation  
22 Determination Date" as including: (1) if the Lennar Litigation is not fully adjudicated within  
23 12 months of the Effective Date; or (2) if either action comprising the Lennar Litigation is  
24 dismissed or results in no award to Marsch and/or KRMW for any one action.

25 43. Neither case comprising the Lennar Litigation has been fully adjudicated,  
26 although 12 months past the Effective Date has long passed. Moreover, one of the cases  
27 comprising the Lennar Litigation was dismissed, and the other case remains in trial. These  
28 facts provided KBR Fund II two additional bases for exercising its Put Right.

1           44.     As KBR Fund II's security for the Preferred Member Put Right, Marsch,  
2 KRMW and Briarwood pledged a security interest and lien on the following:

3               a.     Any and all claims arising out of, related to, or that may be derived  
4 from HCC Investors, LLC and the Lennar Litigation;

5               b.     Certain Retained Benefits, to the extent considered to be independent  
6 of and not considered part of Briarwood's membership in HCC Investors, LLC;

7               c.     Marsch's membership interest in Briarwood and Colony II;

8               d.     Colony II's membership interest in Colony I; and

9               e.     Any and all proceeds of or from the foregoing. (KRMW Operating  
10 Agreement at Section 3.1.2.4.)

11           45.     These security interests are evidenced by three Security Agreements KBR  
12 Fund II entered into with Briarwood, Marsch, and Colony I.

13           46.     KBR Fund II's security interests in personal property are perfected by UCC  
14 Financing Statements filed with the California Secretary of State.

15           47.     The KRMW Operating Agreement states that Marsch, Briarwood, and  
16 KRMW "authorize the holder of the Preferred Units [KBR Fund II]" to take numerous  
17 measures upon default, including to "take any further action necessary or appropriate to  
18 perfect and enforce such security interests." (KRMW Operating Agreement at Section  
19 3.1.2.4.)

20           48.     On January 16, 2009, Judge William R. Nevitt issued a judgment in the Lakes  
21 Litigation, granting the defendants' motion for judgment on the pleadings with prejudice and  
22 without leave to amend.

23           49.     On January 29, 2009, Robert Blanchard, counsel for KBR Fund II, sent a  
24 letter to David Fisher, counsel for Marsch and Briarwood, noting that the Lakes Litigation  
25 had been dismissed and stating that KBR Fund II reserved the right to exercise its Preferred  
26 Member Put Right in the future.

27           50.     On March 25, 2009, Wamstad sent a letter on behalf of KBR Fund II to  
28 Marsch notifying him of KBR Fund II's election to exercise the Preferred Member Put Right.

1 At that time, the Put Purchase Price was \$4,734,000; the first installment of that amount was  
2 due on or before sixty days after Marsch received the written notice.

3 51. On April 22, 2009, Marsch wrote Wamstad denying that the Lakes Litigation  
4 had been dismissed and refusing KBR Fund II's request to exercise the Put Right .

5 52. On May 20, 2009, Kucinski sent Marsch a Notice of Default with respect to  
6 the KRMW Operating Agreement. Kucinski advised that under the Security Agreements for  
7 the KRMW Operating Agreement, Colony I and Colony II's default on the Colony Loan  
8 Agreement also constituted an Event of Default.

9 53. KBR Fund II elected to accelerate the due date of the Put Purchase Price as  
10 permitted by the Security Agreements.

11 54. As of May 20, 2009, the Put Purchase Price was \$4,881,856.

12 **Non-Bankruptcy Litigation**

13 55. On May 21, 2009, the Marsch Parties filed a pre-emptive lawsuit against the  
14 KBR Parties and certain KBR individuals in San Diego Superior Court, Case No. 37-2009-  
15 00090247-CU-BC-CTL (the "First Lawsuit"). The First Lawsuit was assigned to Hon. David  
16 B. Oberholtzer.

17 56. Apparently dissatisfied with their judicial assignment, the Marsch Parties filed  
18 a second, identical case against the KBR Parties in San Diego Superior Court the next day,  
19 May 22, 2009, Case No. 37-2009-00090462-CU-BC-CTL (the "Second Lawsuit"). The  
20 Second Lawsuit was assigned to Hon. Jay M. Bloom. Seemingly satisfied with their second  
21 judicial assignment, the Marsch Parties then dismissed the First Lawsuit.

22 57. The KBR Parties petitioned to compel arbitration and to stay the action before  
23 Judge Bloom. On August 14, 2009, Hon. Jay M. Bloom granted the petition to stay that  
24 action and compel arbitration of the entire dispute against all the KBR Parties based on the  
25 mandatory arbitration provisions in the Colony Loan Agreement and the KRMW Operating  
26 Agreement.

27 58. The Second Lawsuit was assigned to Judge Midlam for arbitration.

1           59.     The Marsch Parties never challenged Judge Bloom's order. Rather, on  
2     October 26, 2009 the Marsch Parties attempted to circumvent that order by commencing a  
3     third action in San Diego Superior Court, Case No. 37-2009-00100835-CU-BC-CTL (the  
4     "Third Lawsuit"). In the Third Lawsuit, the same Marsch Parties raised the same allegations  
5     against the same KBR Parties for the third time, notwithstanding the fact that Judge Bloom  
6     already ordered all such claims to binding arbitration. All 96 paragraphs in all 10 causes of  
7     action that Judge Bloom ordered to arbitration reappeared in the Third Lawsuit. The Marsch  
8     Parties attempted to justify their violation of Judge Bloom's mediation order by asserting that  
9     they had named other parties to the Third Lawsuit.

10           60.     The Third Lawsuit was removed to the United States District Court for the  
11     Southern District of California and is currently pending before Judge Roger T. Benitez as  
12     Case No. 09 CV 2680 BEN AJV. The Third Lawsuit is not stayed by the automatic stay of  
13     Bankruptcy Code section 362.

14           61.     There are several KBR motions that are currently under submission before  
15     Judge Benitez in the Third Lawsuit including, (1) a motion for Rule 11 sanctions against the  
16     Marsch Parties and their attorneys for filing the Third Lawsuit, (2) another motion to compel  
17     arbitration, and (3) a motion to disqualify one of the Marsch Parties' counsel.

18                     **Pending Bankruptcy Cases**

19           62.     On February 23, 2010, Briarwood filed a voluntary petition under chapter 11  
20     of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of  
21     California (the "Bankruptcy Court") thereby commencing the bankruptcy case of *In re*  
22     *Briarwood Capital, LLC*, Case No. 10-02677 (the "Briarwood Bankruptcy Case"). The  
23     bankruptcy petition in the Briarwood Bankruptcy Case was signed by Marsch as "Managing  
24     Member."

25           63.     On February 25, 2010, Marsch filed a voluntary chapter 11 bankruptcy  
26     petition, purportedly on behalf of Colony I, thereby commencing the bankruptcy case if *In re*  
27     *Colony Properties International, LLC*, Case No. 10-02937 (the "Colony I Bankruptcy  
28     Case").

64. Marsch signed the petition which commenced the Colony I Bankruptcy Case as “Managing Member.” Marsch, however, was not the managing member of Colony I when the Colony I Bankruptcy Case was commenced. Marsch was wholly without authority to sign the bankruptcy petition.

65. Marsch is a rouge agent who is purporting to act as the debtor in possession in the Colony I Bankruptcy Case, but, in fact, has no authority to do so.

66. On February 25, 2010, Marsch filed a voluntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court on behalf of himself thereby commencing the bankruptcy case if *In re Nicolas Marsch III*, Case No. 10-02939 (the “Marsh Bankruptcy Case”).

67. On February 28, 2010, Marsch filed an involuntary petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court on behalf of Briarwood Capital, Inc. and against Colony II, thereby commencing the bankruptcy case if *In re Colony Properties International II*, , Case No. 10-03361 (the “Colony II Bankruptcy Case”).

68. The attorney hired by Marsch to file the involuntary bankruptcy petition in the Colony II Bankruptcy Case served the involuntary summons on Marsch as the purported agent of Colony II. In fact, Marsch has no authority to act as the agent of Colony II in the Colony II Bankruptcy Case.

### **Change of Control of Debtor and Related Entities**

#### **Colony I**

69. In furtherance of the Colony Loan Agreement, Marsch executed that certain Security Agreement and Membership Interest Pledge (the “Marsch/KBR Fund I Security Agreement”) dated June 24, 2008. The Marsch/KBR Fund I Security Agreement granted to KBR Fund I a security interest in certain collateral including, without limitation, one hundred percent (100%) of the income, distributions, and capital of Colony I and the voting rights of a one hundred percent (100%) member of Colony I. A true and correct copy of the Marsch/KBR Fund I Security Agreement is attached hereto as **Exhibit 4**.

1           70.     Section 7.3 of the Marsch/KBR Fund I Security Agreement provides that,  
2 upon the event of default, KBR Fund I has the right to exercise “all rights of Marsch to  
3 exercise the voting and other consensual rights that he would otherwise be entitled to  
4 exercise pursuant to the CPI I operating agreement . . . .”

5           71.     Section 7.4 of the Marsch/KBR Fund I Security Agreement provides that,  
6 upon the event of default, KBR Fund I has the right “to vote the Member Interest (whether or  
7 not transferred into the name of Lender), and give all consents, waivers and ratifications in  
8 respect of the Collateral and otherwise act with respect thereto as though it were the outright  
9 owner thereof; UPON THE EVENT OF DEFAULT AND AFTER ANY APPLICABLE  
10 GRACE PERIOD, MARSCH HEREBY IRREVOCABLY CONSTITUTES AND  
11 APPOINTS LENDER THE PROXY AND ATTORNEY-IN-FACT OF MARSCH,  
12 COUPLED WITH AN INTEREST, WITH FULL POWER OF SUBSTITUTION TO DO  
13 SO; SUCH PROXY SHALL CONTINUE IN FULL FORCE AND EFFECT AND  
14 TERMINATE UPON THE SOONER TO OCCUR OF: (a) THE INDEFEASIBLE  
15 PAYMENT IN FULL UNDER THE LOAN AGREEMENT; AND (b) SATISFACTIONS  
16 IN FULL OF THE SECURED OBLIGATIONS.”

17           72.     On February 23, 2010, KBR Fund I executed a Unanimous Written Consent  
18 of the Proxy Holder and Attorney-In-Fact of the Sole Member of Colony Properties  
19 International LLC (the “Colony I Unanimous Written Consent”). A true and correct copy of  
20 the Colony I Unanimous Written Consent is attached hereto as **Exhibit 5**.

21           73.     Through the Colony I Unanimous Written Consent, KBR Fund I, acting as the  
22 proxy holder and attorney-in-fact of Marsch, (1) removed Marsch as the manager of Colony I  
23 and stripped Marsh of all powers to act on behalf of Colony I, and (2) appointed KBR Group  
24 as the manager of Colony I.

25           74.     KBR Group is the current manager of Colony I.

26           75.     KBR Fund I, as the proxy holder and attorney-in-fact of the sole member of  
27 Colony I has the sole right to control Colony I.  
28

1           76. By a letter dated February 24, 2010 (the February 24<sup>th</sup> Letter”) from counsel  
2 for the KBR Parties to Attorney Jeffrey Davis, transmitted via e-mail, the KBR Parties  
3 delivered a copy of Colony I Unanimous Written Consent and informed Attorney Davis that  
4 Marsch had been removed as the manager of Colony I. The letter also expressly directed  
5 Attorney Davis not to file a voluntary bankruptcy petition on behalf of Colony I. A true and  
6 correct copy of the February 24<sup>th</sup> Letter is attached hereto as **Exhibit 6**.

7           77. The Colony I Unanimous Written Consent was also served on Marsch by  
8 certified mail and by e-mail on February 24, 2010. Marsch refused delivery of the certified  
9 mail. A true and correct copy of the refused certified letter containing the Colony I  
10 Unanimous Written Consent is attached hereto as **Exhibit 7**.

11           78. Notwithstanding the Colony I Unanimous Written Consent and the  
12 unambiguous communication from the manager of Colony I and the proxy holder and  
13 attorney-in-fact of the sole member of Colony I, on February 25, 2010, Attorney Davis filed  
14 a voluntary bankruptcy petition for Colony I that was signed by Marsch as “Managing  
15 Member.”

16           79. The change in control of Colony I occurred prior to the commencement of the  
17 Colony I Bankruptcy Case and the Marsch Bankruptcy Case.

18           80. The voluntary bankruptcy petition purportedly filed by Colony I is  
19 unauthorized and invalid.

## 20 **Colony II**

21           81. In furtherance of the Colony Loan Agreement, Colony I executed that certain  
22 Security Agreement and Membership Interest Pledge (the “Colony I Security Agreement”)  
23 dated June 24, 2008. The Colony I Security Agreement granted to KBR Fund I a security  
24 interest in certain collateral including, without limitation, one hundred percent (100%) of the  
25 income, distributions, and capital of Colony II and the voting rights of a one hundred percent  
26 (100%) member of Colony II. A true and correct copy of the Colony I Security Agreement is  
27 attached hereto as **Exhibit 8**.

1           82.     Section 7.3 of the Colony I Security Agreement provides that, upon the event  
2 of default, KBR Fund I has the right to exercise “all rights of [Colony I] to exercise the  
3 voting and other consensual rights that he would otherwise be entitled to exercise pursuant to  
4 the CPI II operating agreement . . . .”

5           83.     Section 7.4 of the Colony I Security Agreement provides that, upon the event  
6 of default, KBR Fund I has the right “vote the Membership Interest (whether or not  
7 transferred into the name of Lender), and give all consents, waivers and ratifications in  
8 respect of the Collateral and otherwise act with respect thereto as though it were the outright  
9 owner thereof; UPON THE EVENT OF DEFAULT AND AFTER ANY APPLICABLE  
10 GRACE PERIOD, GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND  
11 APPOINTS LENDER THE PROXY AND ATTORNEY-IN-FACT OF GRANTOR,  
12 COUPLED WITH AN INTEREST, WITH FULL POWER OF SUBSTITUTION TO DO  
13 SO; SUCH PROXY SHALL CONTINUE IN FULL FORCE AND EFFECT AND  
14 TERMINATE UPON THE SOONER TO OCCUR OF: (a) THE INDEFEASIBLE  
15 PAYMENT IN FULL UNDER THE LOAN AGREEMENT; AND (b) SATISFACTIONS  
16 IN FULL OF THE SECURED OBLIGATIONS.”

17           84.     On February 23, 2010, KBR Fund I executed a Unanimous Written Consent  
18 of the Proxy Holder and Attorney-In-Fact of the Sole Member of Colony Properties  
19 International II LLC (the “Colony II Unanimous Written Consent”). A true and correct copy  
20 of the Colony II Unanimous Written Consent is attached hereto as **Exhibit 9**.

21           85.     Through the Colony II Unanimous Written Consent, KBR Fund I, acting as  
22 the proxy holder and attorney-in-fact of Colony I, (1) removed Marsch as the manager of  
23 Colony II and stripped Marsh of all powers to act on behalf of Colony II, and (2) appointed  
24 KBR Group as the manager of Colony II.

25           86.     KBR Group is the current manager of Colony II.

26           87.     KBR Fund I, as the proxy holder and attorney-in-fact of the sole member of  
27 Colony II has the sole right to control Colony II.

28



1           88. By the February 24<sup>th</sup> Letter, from counsel for the KBR Parties to Attorney  
2 Jeffrey Davis, transmitted via e-mail, the KBR Parties delivered a copy of Colony II  
3 Unanimous Written Consent and informed Attorney Davis that Marsch had been removed as  
4 the manager of Colony II. The letter also expressly directed Attorney Davis not to file a  
5 voluntary bankruptcy petition on behalf of Colony II.

6           89. The Colony II Unanimous Written Consent was also served on Marsch and  
7 Colony I by certified mail and by e-mail on February 24, 2010. Marsch refused delivery of  
8 the certified mail. A true and correct copy of the refused certified letter containing the  
9 Colony II Unanimous Written Consent is attached hereto as **Exhibit 10**.

10           90. On February 28, 2010, Marsch signed and filed on behalf of Briarwood  
11 Capital, Inc. (apparently a different entity than Briarwood Capital, LLC) an involuntary  
12 bankruptcy petition against Colony II.

13           91. The change in control of Colony II occurred prior to the commencement of  
14 the Colony II Bankruptcy Case and the Marsch Bankruptcy Case.

15 **KRMW Real Estate Investment Group**

16           92. Pursuant to the terms of the KRMW Operating Agreement, the sole members  
17 are Briarwood, which hold thirty-five units (35%) and KBR Fund II which holds sixty-five  
18 units (65%).

19           93. Section 4.3 of the KRMW Operating Agreement provides in part: "The initial  
20 Manager shall be Marsch. If Marsch at any time cannot or will not act as Manager, or  
21 otherwise ceases serving as Manager for any reason, Marsch hereby consents that KBR  
22 Group, LLC, a California limited liability company, will be elected or otherwise appointed as  
23 and shall be the Manager."

24           94. Pursuant to California Corporations Code section 17152, managers of a  
25 limited liability company may be removed, with or without cause, by the vote of a majority  
26 in interest of the members. Likewise, pursuant to section 17152, election of managers to fill  
27 vacancies shall be by the affirmative vote of a majority in interest of the members.

1           95.     On February 23, 2010, KRB Fund II held a majority of the interests in  
2 KRMW.

3           96.     On February 23, 2010, KBR Fund II executed a Written Consent of the  
4 Majority of the Members of KRMW Real Estate Investment Group, LLC (the “KRMW  
5 Written Consent”). A true and correct copy of the KRMW Written Consent is attached  
6 hereto as **Exhibit 11**.

7           97.     Through the KRMW Written Consent, KBR Fund II, as the majority interest  
8 holder of KRMW, (1) removed Marsch as the manager of KRMW and stripped Marsh of all  
9 powers to act on behalf of KRMW, and (2) appointed KBR Group as the manager of  
10 KRMW.

11          98.     KBR Group is currently the manager of KRMW.

12          99.     By the February 24<sup>th</sup> Letter from counsel for the KBR Parties to Attorney  
13 Jeffrey Davis, transmitted via e-mail, the KBR Parties delivered a copy of KRMW Written  
14 Consent and informed Attorney Davis that Marsch had been removed as the manager of  
15 KRMW.

16          100.    The KRMW Written Consent was also served on Marsch, Briarwood, and  
17 Colony I by certified mail and by e-mail on February 24, 2010. Marsch refused delivery of  
18 the certified mail. A true and correct copy of the refused certified letter containing the  
19 KRMW Written Consent is attached hereto as **Exhibit 12**.

20          101.    The change in control of KRMW occurred prior to the commencement of the  
21 Marsch Bankruptcy Case.

22 **Briarwood Capital**

23          102.    In furtherance of the KRMW Operating Agreement, Marsch executed that  
24 certain Security Agreement (the “Marsch/KBR Fund II Security Agreement”) dated  
25 November 5, 2008. A true and correct copy of the Marsch/KBR Fund II Security Agreement  
26 is attached hereto as **Exhibit 13**.

27          103.    The Marsch/KBR Fund II Security Agreement granted to KBR Fund II a  
28 security interest in certain collateral including, without limitation, the following collateral:

1 “(i) All of Marsch's membership interest in CPI and Briarwood including, without limitation,  
 2 the rights to hundred percent (100%) of the income, distributions, and capital of CPI and  
 3 Briarwood, and voting rights of a hundred percent (100%) Member of CPI and Briarwood,  
 4 and all of the hereafter-acquired membership interests of CPI and Briarwood in which  
 5 Marsch, directly or indirectly, has an interest at any time, together with the proceeds of the  
 6 foregoing, including any and all distributions, cash, membership interests, instruments, and  
 7 other property from time to time received, receivable, or otherwise distributed in respect of or  
 8 in exchange for these membership interests (collectively, "Marsch Membership Interests");  
 9 (ii) Any and all of Marsch's current, pending, and/or future claims and causes of action  
 10 (including commercial tort claims, contractual claims, or other claims) arising out of the  
 11 project commonly referred to as "The Bridges at Rancho Santa Fe" including without  
 12 limitation case no. GIC877446 pending in the Superior Court of California, County of San  
 13 Diego; (iii) Any and all of Marsch's current, pending, and/or future claims and causes of  
 14 action (including commercial tort claims, contractual claims, or other claims) arising out of  
 15 the project commonly referred to as "The Lakes Above Rancho Santa Fe" including without  
 16 limitation case no. GIC875457 pending in the Superior Court of California, County of San  
 17 Diego (sections (ii) and (ii) shall be collectively referred to as the "Claims"); (iv) All of  
 18 Marsch's rights and interests under the HCC Investors, LLC, a Delaware limited liability  
 19 company, operating agreement sections 5.04, 6.05(a), 6.05(b), and 6.05(c) (the "Retained  
 20 Benefits"); and (v) Any and all replacements, substitutes, and/or proceeds of or for any of the  
 21 foregoing (the "Proceeds").”

22 104. Section 7.3 of the Marsch/KBR Fund II Security Agreement provides that,  
 23 upon the event of default, KBR Fund II has the right to exercise “all rights of Marsh to  
 24 exercise the voting and other consensual rights that he would otherwise be entitled to  
 25 exercise pursuant to the . . . Briarwood operating agreement . . . .”

26 105. Section 7.4 of the Marsch/KBR Fund II Security Agreement provides that,  
 27 upon the event of default, KBR Fund II has the right “vote the Marsch Membership Interests  
 28 (whether or not transferred into the name of KBR), and give all consents, waivers and

1 ratifications in respect of the Collateral and otherwise act with respect thereto as though it  
2 were the outright owner thereof; UPON THE EVENT OF DEFAULT AND AFTER ANY  
3 APPLICABLE GRACE PERIOD, BORROWER HEREBY IRREVOCABLY  
4 CONSTITUTES AND APPOINTS LENDER THE PROXY AND ATTORNEY-IN-FACT  
5 OF BORROWER, COUPLED WITH AN INTEREST, WITH FULL POWER OF  
6 SUBSTITUTION TO DO SO; SUCH PROXY SHALL CONTINUE IN FULL FORCE  
7 AND EFFECT AND TERMINATE UPON THE SOONER TO OCCUR OF: (a) THE  
8 INDEFEASIBLE PAYMENT IN FULL UNDER THE OPERATING AGREEMENT; AND  
9 (b) SATISFACTIONS IN FULL OF THE SECURED OBLIGATIONS.”

10 106. On February 24, 2010, KBR Fund II executed a Unanimous Written Consent  
11 of the Proxy Holder and Attorney-In-Fact of the Sole Member of Briarwood Capital, LLC  
12 (the “Briarwood Unanimous Written Consent”). A true and correct copy of the Briarwood  
13 Unanimous Written Consent is attached hereto as **Exhibit 14**.

14 107. Through the Briarwood Unanimous Written Consent, KBR Fund II, acting as  
15 the proxy holder and attorney-in-fact of Marsch, (1) removed Marsch as the manager of  
16 Briarwood and stripped Marsh of all powers to act on behalf of Briarwood, and (2) appointed  
17 KBR Group as the manager of Briarwood with full powers to act on behalf of Briarwood  
18 including, without limitation, all matters involving the Briarwood Bankruptcy Case.

19 108. The change in control of Briarwood occurred after the commencement of the  
20 Briarwood Bankruptcy Case and prior to the commencement of the Marsch Bankruptcy  
21 Case.

## 22 **FIRST CAUSE OF ACTION**

### 23 **(Declaratory Relief – Colony I)**

24 109. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full  
25 herein.

26 110. There is a present controversy between the KBR Parties and the Marsch  
27 Parties regarding who is in control of Colony I.  
28

111. Plaintiffs desire a judicial determination that (1) KBR Group is the sole authorized manager of Colony I, (2) KBR Group has the exclusive authority to make decisions for Colony I as the debtor in possession in the Colony I Bankruptcy Case, (3) Marsch is not the manager of Colony I, and (4) Marsch has no authority to make decisions for Colony I as the debtor in possession in the Colony I Bankruptcy Case.

112. A judicial determination is necessary and appropriate at this time because, absent the appointment of a chapter 11 trustee, the Colony I Bankruptcy Case cannot proceed without a determination of who is in control of Colony I.

## **SECOND CAUSE OF ACTION**

### **(Declaratory Relief – Colony II)**

113. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full herein.

114. There is a present controversy between the KBR Parties and the Marsch Parties regarding who is in control of Colony II.

115. Plaintiffs desire a judicial determination that (1) KBR Group is the sole authorized manager of Colony II, (2) KBR Group has the exclusive authority to make decisions for Colony II with respect to the Colony II Bankruptcy Case, (3) Marsch is not the manager of Colony II, and (4) Marsch has no authority to make decisions for Colony II with respect to the Colony II Bankruptcy Case.

116. A judicial determination is necessary and appropriate at this time because, absent the appointment of a chapter 11 trustee, the Colony II Bankruptcy Case cannot proceed without a determination of who is in control of Colony II.

## **THIRD CAUSE OF ACTION**

### **(Declaratory Relief -- KRMW)**

117. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full herein.

118. There is a present controversy between the KBR Parties and the Marsch Parties regarding who is in control of KRMW.

1           119. Plaintiffs desire a judicial determination that (1) KBR Group is the sole  
2 authorized manager of KRMW, (2) KBR Group has the exclusive authority to make  
3 decisions for KRMW, (3) Marsch is not the manager of KRMW, and (4) Marsch has no  
4 authority to make decisions for KRMW.

5           120. A judicial determination is necessary and appropriate at this time because the  
6 control of KRMW is significantly related to the administration of the Colony II Bankruptcy  
7 Case and the Briarwood Bankruptcy Case.

8                           **FOURTH CAUSE OF ACTION**

9                           **(Declaratory Relief -- Briarwood)**

10           121. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full  
11 herein.

12           122. There is a present controversy between the KBR Parties and the Marsch  
13 Parties regarding who is in control of Briarwood.

14           123. Plaintiffs desire a judicial determination that (1) KBR Group is the sole  
15 authorized manager of Briarwood, (2) KBR Group has the exclusive authority to make  
16 decisions for Briarwood as the debtor in possession in the Briarwood Bankruptcy Case, (3)  
17 Marsch is not the manager of Briarwood, and (4) Marsch has no authority to make decisions  
18 for Briarwood as the debtor in possession in the Briarwood Bankruptcy Case.

19           124. A judicial determination is necessary and appropriate at this time because,  
20 absent the appointment of a chapter 11 trustee, the Briarwood Bankruptcy Case cannot  
21 proceed without a determination of who is in control of Briarwood.

22                           **FIFTH CAUSE OF ACTION**

23                           **(Injunctive Relief – Colony I)**

24           125. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full  
25 herein.

26           126. Marsch is continuing to hold himself out as someone with authority to act on  
27 behalf of Colony I.

28           127. Marsch, in fact, has no actual authority to act on behalf of Colony I.

1           128. It is appropriate for the Bankruptcy Court to permanently enjoin Marsch from  
2 continuing to hold himself out as someone who is authorized to act on behalf of Colony I.

3                           **SIXTH CAUSE OF ACTION**

4                           **(Injunctive Relief – Colony II)**

5           129. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full  
6 herein.

7           130. Marsch is continuing to hold himself out as someone with authority to act on  
8 behalf of Colony II.

9           131. Marsch, in fact, has no actual authority to act on behalf of Colony II.

10          132. It is appropriate for the Bankruptcy Court to permanently enjoin Marsch from  
11 continuing to hold himself out as someone who is authorized to act on behalf of Colony II.

12                           **SEVENTH CAUSE OF ACTION**

13                           **(Injunctive Relief -- KRMW)**

14          133. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full  
15 herein.

16          134. Marsch is continuing to hold himself out as someone with authority to act on  
17 behalf of KRMW.

18          135. Marsch, in fact, has no actual authority to act on behalf of KRMW.

19          136. It is appropriate for the Bankruptcy Court to permanently enjoin Marsch from  
20 continuing to hold himself out as someone who is authorized to act on behalf of KRMW.

21                           **EIGHTH CAUSE OF ACTION**

22                           **(Injunctive Relief -- Briarwood)**

23          137. Plaintiffs incorporate paragraphs 1 through 108 above as if set forth in full  
24 herein.

25          138. Marsch is continuing to hold himself out as someone with authority to act on  
26 behalf of Briarwood.

27          139. Marsch, in fact, has no actual authority to act on behalf of Briarwood.

140. It is appropriate for the Bankruptcy Court to permanently enjoin Marsch from continuing to hold himself out as someone who is authorized to act on behalf of Briarwood.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request relief as follows:

1. With respect to the First Cause of Action, a judicial determination that (1) KBR Group is the sole authorized manager of Colony I, (2) KBR Group has the exclusive authority to make decisions for Colony I as the debtor in possession in the Colony I Bankruptcy Case, (3) Marsch is not the manager of Colony I, and (4) Marsch has no authority to make decisions for Colony I as the debtor in possession in the Colony I Bankruptcy Case;

2. With respect to the Second Cause of Action, a judicial determination that (1) KBR Group is the sole authorized manager of Colony II, (2) KBR Group has the exclusive authority to make decisions for Colony II with respect to the Colony II Bankruptcy Case, (3) Marsch is not the manager of Colony II, and (4) Marsch has no authority to make decisions for Colony II with respect to the Colony II Bankruptcy Case;

3. With respect to the Third Cause of Action, a judicial determination that (1) KBR Group is the sole authorized manager of KRMW, (2) KBR Group has the exclusive authority to make decisions for KRMW, (3) Marsch is not the manager of KRMW, and (4) Marsch has no authority to make decisions for KRMW;

4. With respect to the Fourth Cause of Action, a judicial determination that (1) KBR Group is the sole authorized manager of Briarwood, (2) KBR Group has the exclusive authority to make decisions for Briarwood as the debtor in possession in the Briarwood Bankruptcy Case, (3) Marsch is not the manager of Briarwood, and (4) Marsch has no authority to make decisions for Briarwood as the debtor in possession in the Briarwood Bankruptcy Case;

5. With respect to the Fifth Cause of Action, an order permanently enjoining Marsch from (1) exercising control over Colony I or its assets, and (2) representing himself



1 to be the manager of Colony I or otherwise as someone who is authorized to act on behalf of  
2 Colony I;

3 6. With respect to the Sixth Cause of Action, an order permanently enjoining  
4 Marsch from (1) exercising control over Colony II or its assets, and (2) representing himself  
5 to be the manager of Colony II or otherwise as someone who is authorized to act on behalf of  
6 Colony II;

7 7. With respect to the Seventh Cause of Action, an order permanently enjoining  
8 Marsch from (1) exercising control over KRMW or its assets, and (2) representing himself to  
9 be the manager of KRMW or otherwise as someone who is authorized to act on behalf of  
10 KRMW;

11 8. With respect to the Eighth Cause of Action, an order permanently enjoining  
12 Marsch from (1) exercising control over Briarwood or its assets, and (2) representing himself  
13 to be the manager of Briarwood or otherwise as someone who is authorized to act on behalf  
14 of Briarwood;

15 9. Attorneys' fees and costs of suit to the extent recoverable under applicable  
16 law; and

17 10. Such other relief as may be just and proper.

18  
19 March 9, 2010

VANDERHOFF LAW GROUP

20 /s/ Alan Vanderhoff

21 By: \_\_\_\_\_  
Alan Vanderhoff

22 Attorneys for KBR Group, LLC, KBR Opportunity  
23 Fund I, LP, and KBR Opportunity Fund II, LP  
24  
25  
26  
27  
28